Office - Supreme Court, U.S.
FILED
SEP 29 1982
ALEXANDER L. STEVAS,
CLERK

No. 82-206

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

FIREFIGHTERS LOCAL UNION No. 1784,
Petitioner,

v.

CARL W. STOTTS, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

BRIEF OF AMICUS CURIAE, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, AFL-CIO, IN SUPPORT OF PETITIONER

EDWARD J. HICKEY, JR.
MICHAEL S. WOLLY *
ERICK J. GENSER
MULHOLLAND & HICKEY
1125—15th Street, N.W.
Suite 400
Washington, D.C. 20005
Telephone: (202) 833-8855
Attorneys for the International Association of Fire Fighters, AFL-CIO

* Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
THE INTEREST OF THE AMICUS CURIAE	1
SUMMARY OF ARGUMENT	3
ARGUMENT	4
The Petition Should Be Granted Because the Decision Below Disregards Principles Established By This Court Concerning The Special Protection That Is Afforded Bona Fide Seniority Systems In The Context Of Employment Discrimination Suits	4
CONCLUSION	8

TABLE OF AUTHORITIES

Cases: Page

American Tobacco Co. v. Patterson, 456 U.S. ——, 71 L.Ed.2d 748 (1982) 4, 7

California Brewers Association v. Bryant, 444 U.S. 598 (1980) 7

Franks v. Bowman Transportation Co., 424 U.S. 747 (1976) 6

General Building Contractors Association, Inc. v. Pennsylvania, —— U.S. ——, 73 L.Ed.2d 835 (1982) 7

International Brotherhood of Teamsters v. United States, 431 U.S. 324 (1977) 5, 6

Pullman-Standard v. Swint, —— U.S. ——, 102 S. Ct. 1781 (1982) 7

Stotts v. Memphis Fire Department, 679 F.2d 541 (6th Cir. 1982) 4, 5, 7

Trans World Airlines, Inc. v. Hardison, 432 U.S. 63 (1977) 5, 6

Statutes:

§ 703(h) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(h) 4, 5, 6, 7, 8

42 U.S.C. § 1981 7

Miscellaneous:

"Layoffs, Rifs, and EEO in the Public Sector, A BNA Special Report," *Government Employee Relations Report*, GERR No. 949, February 8, 1982 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-206

FIREFIGHTERS LOCAL UNION NO. 1784,
Petitioner,

v.

CARL W. STOTTS, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

BRIEF OF AMICUS CURIAE, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, AFL-CIO, IN SUPPORT OF PETITIONER

THE INTEREST OF THE AMICUS CURIAE

The International Association of Fire Fighters, AFL-CIO files this brief, *amicus curiae*, in support of Petitioner Firefighters Local Union No. 1784, pursuant to Rule 36 of the Rules of the Supreme Court.[1] The International Association of Fire Fighters, AFL-CIO (IAFF) is an unincorporated association comprised of federal,

---

[1] All parties consented to the filing of this brief. Copies of written consents have been filed with the Court.

state, and municipal fire fighters throughout the United States and Canada. The current membership includes approximately 153,000 state and municipal fire fighters employed by states, cities, and towns across the U.S. The IAFF's objectives include promoting and securing improved wages, hours, and working conditions of fire fighters through collective bargaining, legislation, legal action, and other appropriate means.

The IAFF wishes to represent the interests of its members across the country who are facing, or may face, the prospects of recession-induced layoffs such as those which were proposed by the City of Memphis and who are employed pursuant to collectively bargained seniority systems. The prospects of reductions-in-force in these jurisdictions are not merely conjectural.

In a report issued by the Bureau of National Affairs, figures released showed that layoffs of state workers occurred in fiscal year 1981 in 43 of the 50 states, while in fiscal year 1982, 44 states either experienced layoffs or anticipated them by the end of the year. "Layoffs, Rifs, and EEO in the Public Sector, A BNA Special Report," *Government Employee Relations Report*, GERR, No. 949, February 8, 1982, pp. 13-15. The financial situation among local governments indicates a similarly stark outlook. In a survey of 100 cities, 62 have laid off or were expecting to lay off employees in fiscal year 1982. Many of these cities have collective bargaining agreements with seniority-based layoff provisions in effect covering their fire fighter employees. Like Memphis, many cities have also entered into consent decrees to settle employment discrimination lawsuits. *Government Employee Relations Report*, *supra*, at 23-36. There is no indication that the financial problems of state and local governments will significantly improve in the near future, and the prospects for continued reductions-in-force remain substantial.

The IAFF has a major interest, then, in the Petition for Writ of Certiorari previously filed by Petitioner, Firefighters Local Union No. 1784, and offers this brief as *amicus curiae* to request that the Petition for Writ of Certiorari be granted.

SUMMARY OF ARGUMENT

In affirming the District Court's modification of a consent decree previously entered into by the City of Memphis and minority employees in settlement of an employment discrimination suit, the Court of Appeals for the Sixth Circuit directed the layoff of employees contrary to the provisions of a bona fide seniority system which had been agreed to by the City and the fire fighters union. The decision of the Sixth Circuit failed to apply the principles established by this Court that absent a discriminatory purpose, the routine application of a seniority system is not invalid, even though it may result in certain discriminatory consequences. Further, the lower courts' decisions award superseniority to minority employees even though those employees are not identified victims of racially discriminatory employment practices. Because the decisions of the courts below fail to properly consider these and other principles involving the statutory protection afforded bona fide seniority systems or employment practices, the petition for writ of certiorari should be granted.

ARGUMENT

The Petition Should Be Granted Because the Decision Below Disregards Principles Established By This Court Concerning The Special Protection That Is Afforded Bona Fide Seniority Systems In The Context Of Employment Discrimination Suits.

In a broad pronouncement, the Sixth Circuit held that a District Court does not abuse its discretion when it modifies a consent decree in a manner which directly conflicts with the provisions of a bona fide seniority system contained in a collective bargaining agreement. *Stotts v. Memphis Fire Department*, 679 F.2d 541 (6th Cir. 1982).[2] The City of Memphis was faced with an economic crisis. It proposed to reduce its firefighting force via layoffs in accordance with the routine application of the "last-hired, first-furloughed" provisions of its agreement with the firefighters union. This action would have caused minority employees hired pursuant to a consent decree temporarily to lose their jobs. The District Court determined that this would frustrate the purpose of the consent decree to increase minority hiring and promotions. It therefore modified the decree to enjoin layoffs in accordance with seniority. The Sixth Circuit approved. This decision flies in the face of the protection Congress afforded bona fide seniority systems under Section 703(h) of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(h).

The decisions of this Court have repeatedly emphasized the "overriding importance" of seniority provisions in collective bargaining. *American Tobacco Co. v. Patterson*, 456 U.S. ——, 71 L.Ed. 2d 748, 760 (1982) (quoting *Humphrey v. Moore*, 375 U.S. 335, 346 (1964)). Such provisions are "universally included" in collective bargaining agreements. In enacting the Civil Rights Act of

[2] The Sixth Circuit held that the District Court erred in ruling that the seniority system was not bona fide. *Stotts*, *supra*, 679 F.2d at 551, n.6.

1964, Congress was fully aware of the importance and extent of seniority systems in collective bargaining agreements between employers and representatives of employees and afforded bona fide systems "special treatment under Title VII itself." *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 81 (1977). As this Court explained in *International Brotherhood of Teamsters v. United States*, 421 U.S. 324, 352 (1977), "the unmistakable purpose of § 703(h) was to make clear that the routine application of a bona fide seniority system would not be unlawful under Title VII."

The court below, however, gave little more than lip-service to this Court's seniority system decisions. Instead, it held that the bona fide seniority system provisions could be overridden "where [seniority-based] layoffs caused by an unanticipated economic crisis threatens to frustrate the basic purpose of a Title VII consent decree." *Stotts, supra*, 679 F.2d at 563. The purpose of the consent decree entered into by the Plaintiffs and the City in 1980 was to remedy past hiring and promotion practices of the City relative to minorities, and was intended to supplement a similar decree entered in 1974. At the time the District Court modified the decree to prohibit layoffs in accordance with seniority, it made no determination that the City had failed to take the necessary steps to comply with the decree. Nor has such a finding been made on appeal. Thus, the remedial action ordered by the courts below enjoining the City's legitimate response to an unanticipated fiscal emergency far exceeds the remedial purposes of the consent decree. The alleged wrong to be remedied by the 1980 decree was the City's *hiring* and *promotion* policies, not its seniority system. Nevertheless, it is its seniority system which has been trammelled.

The scope of a district court's remedial powers under Title VII of the Civil Rights Act of 1964 is determined by the purposes of that Act. This Court has noted that "a

primary objective of Title VII is prophylactic: "to achieve equal employment opportunity and to remove the barriers that have operated to favor white male employees over other employees." *International Brotherhood of Teamsters v. United States, supra*, 431 U.S. at 364. Those barriers have been removed through the City's continued compliance with the consent decree, and thus, the primary objective of Title VII has been attained.

Nevertheless, the Court of Appeals' affirmance of the District Court's order approves what is, in effect, a grant of retroactive or superseniority to minority firemen in contravention not only of the procedures contained in the bona fide seniority system, but also of the original decree itself.[3] It no longer can be disputed that an award of retroactive seniority to identified victims of discriminatory employment practices is proper. *Franks v. Bowman Transportation Co.*, 424 U.S. 747 (1976). But here there has been no adjudication that the City has committed any violation of Title VII, either in determining that a reduction in personnel was necessary or in any other way.[4] Thus, there are no identified victims of discriminatory practices to be accorded such seniority relief under *Franks*.

More importantly, it is well-settled at this point that Section 703(h) immunizes bona fide seniority systems from attack. Absent a discriminatory purpose, the operation of a seniority system that has some discriminatory consequences is not unlawful. *Trans World Airlines, Inc. v. Hardison, supra*, 432 U.S. at 82.

---

[3] "[L]ayoffs would be made based on seniority, however the black employees on the seniority list would be skipped over so as to maintain the racial composition of each classification." Pet. for Cert. of Memphis Fire Dept., p. 6 n.3.

[4] In fact, the District Court specifically found "that the adoption of this layoff policy was not adopted with the intent or specific purpose to discriminate against black . . . neither the layoffs nor the policy adopted was intended to be discriminatory." (Pet. of Firefighters Loc. U. No. 1784, p. A73).

The courts below voiced concerns that the layoffs, if conducted in accordance with the procedures contained in the seniority system, would fall most heavily on the minority employees. The layoffs would indeed affect minority employees in greater proportions, but this disproportionate impact is due solely to the fact that most minority firemen were only recently hired. Such a disproportionate impact alone is not enough under § 703(h) to invalidate a seniority system. *Pullman Standard v. Swint*, —— U.S. ——, 102 S. Ct. 1781 (1982.)

In examining the legislative history of § 703(h), this Court has noted that Congress considered the impact that Title VII would have on seniority rights, and was aware that a conflict may exist between the goal of eliminating discrimination in the work place and the policy favoring full and free collective bargaining unimpaired by harmful intrusions by the courts and federal agencies. *American Tobacco Co., supra*, 71 L.Ed. 2d at 760. *See California Brewers Association v. Bryant*, 444 U.S. 598, 608 (1980). While this conflict may have become highly visible when unanticipated budget difficulties necessitated layoffs in the Memphis fire department, the Court of Appeals is not free to upset the balance struck by Congress when it enacted § 703(h). Yet this is precisely the effect of that court's decision when it chose to override the provisions of what it held to be a neutral, legitimate seniority system.[5]

Thus, the decision of the Court of Appeals directly conflicts with prior decisions of this Court regarding the

---

[5] The fact that the Complaint filed by Plaintiffs against the City of Memphis was brought pursuant to 42 U.S.C. § 1981 as well as Title VII does not serve as an alternative basis upon which to suspend the operation of a bona fide seniority system. Before a remedy may be imposed under the rubric of that statute, it also must be shown that any differential treatment was the result of purposeful discrimination. *General Building Contractors Association, Inc. v. Pennsylvania*, —— U.S. ——, 73 L.Ed.2d 835 (1982). No such showing was made below. *Stotts, supra*, 679 F.2d at 551, n.6.

statutory protection afforded bona fide seniority systems under Section 703(h). The importance of resolving this conflict in these times of fiscal emergencies and resultant economic layoffs cannot be overstated. The effects on all employees working under agreements containing seniority systems is obvious.

CONCLUSION

For the foregoing reasons, the Amicus requests that a writ of certiorari be granted to review the decision of the Court of Appeals for the Sixth Circuit.

Respectfully submitted,

EDWARD J. HICKEY, JR.
MICHAEL S. WOLLY *
ERICK J. GENSER
MULHOLLAND & HICKEY
1125—15th Street, N.W.
Suite 400
Washington, D.C. 20005
Telephone: (202) 833-8855
Attorneys for the International Association of Fire Fighters, AFL-CIO

* Counsel of Record